

GOVERNMENT

SIKKIM



GAZETTE

**EXTRAORDINARY
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No. 224

**SKM/GOV/2018/7141
25th April, 2018**

26/Home/2018

ORDER

Whereas, a question was raised before me in petitions submitted by Shri O.P Bhandari and others on 30/10/2017 seeking disqualification of the following fourteen (14) members of Sikkim Legislative Assembly under Clause 1 (a) of Article 191 of the Constitution of India :-.

- A.** (1) Shri Danorbu Sherpa (AC-6 Daramdin BL);
(2) Shri Sonam Dadul Bhutia (AC-1 Yoksam Tashiding BL);
(3) Smt. Tilu Gurung (AC-13 Namthang Reteypani);
(4) Shri Karma Sonam Lepcha (AC-5 Rinchenpong BL);
(5) Shri Ugen Nedup Bhutia (AC-29 Kabi Lungchuk BL);
(6) Shri Shyam Pradhan (AC-26 Arithang);
(7) Shri Hemendra Adhikari (AC-19 Rhenock);
(8) Shri Gopal Baraily (AC-18 West Pendam SC);
(9) Dr. Mechung Bhutia (AC-24 Martam Rumtek BL);
(10) Shri Pintso Chhopel (AC-27 Gangtok BL);
(11) Shri Timothy William Basnett (AC-25 Upper Tadong);
- B.** (12) Shri Bek Bahadur Rai (AC-22 Namcheybong);
(13) Ms. Chandra Maya Subba (AC-2 Yangthang);
- C.** (14) Shri Bikram Pradhan (AC-20 Chujachen).

And whereas, the opinion of the Election Commission of India under Article 192 Clause (2) of the Constitution of India was obtained.

And whereas, the Election Commission of India has opined vide Reference Case No. 1 (G) of 2018 Dated: 18.04.2018 that the MLAs appointed at various dates between 28.05.2014 and 30.11.2015 to 25.08.2017 as Parliamentary Secretary to the Government of Sikkim are not disqualified for holding office of profit as the office of the Parliamentary Secretary under the Government of Sikkim falls under exempted category under provisions of Sikkim Legislative

Assembly Members (Removal of Disqualification) Act, 1978 as amended by the Sikkim Legislative Assembly Members (Removal of Disqualifications) Amendment Act, 2006. The Members of Sikkim Legislative Assembly are named as below:-

- (1) Shri Danorbu Sherpa (AC-6 Daramdin BL);
- (2) Shri Sonam Dadul Bhutia (AC-1 Yoksam Tashiding BL);
- (3) Smt. Tilu Gurung (AC-13 Namthang Reteypani);
- (4) Shri Karma Sonam Lepcha (AC-5 Rinchenpong BL);
- (5) Shri Ugen Nedup Bhutia (AC-29 Kabi Lungchuk BL);
- (6) Shri Shyam Pradhan (AC-26 Arithang);
- (7) Shri Hemendra Adhikari (AC-19 Rhenock);
- (8) Shri Gopal Baraily (AC-18 West Pendam SC);
- (9) Dr. Mechung Bhutia (AC-24 Martam Rumtek BL);
- (10) Shri Pintso Chöpel (AC-27 Gangtok BL);
- (11) Shri Timothy William Basnett (AC-25 Upper Tadong).

And whereas, the Election Commission of India has also opined that Shri Bek Bahadur Rai (AC-22 Namcheybong), and Ms. Chandra Maya Subba (AC-2 Yangthang), are not disqualified for holding office of profit as the offices occupied by them namely Chairman, Public Accounts Committee and Chairperson of the Estimates Committee of the Sikkim Legislative Assembly respectively are not offices under the Government.

Opinion of the Election Commission is enclosed with this order as Annexure.

And whereas having considered the facts on record as contained in the opinion of the Election Commission and having been fully satisfied therewith; Now, therefore, I, Shrinivas Patil, Governor of Sikkim, in exercise of power conferred on me under Clause (1) of Article 192 of the Constitution of India, do hereby decide that the following thirteen (13) MsLA :-

- A. (1) Shri Danorbu Sherpa (AC-6 Daramdin BL);
(2) Shri Sonam Dadul Bhutia (AC-1 Yoksam Tashiding BL);
(3) Smt. Tilu Gurung (AC-13 Namthang Reteypani);
(4) Shri Karma Sonam Lepcha (AC-5 Rinchenpong BL);
(5) Shri Ugen Nedup Bhutia (AC-29 Kabi Lungchuk BL);
(6) Shri Shyam Pradhan (AC-26 Arithang);
(7) Shri Hemendra Adhikari (AC-19 Rhenock);
(8) Shri Gopal Baraily (AC-18 West Pendam SC);
(9) Dr. Mechung Bhutia (AC-24 Martam Rumtek BL);
(10) Shri Pintso Chöpel (AC-27 Gangtok BL);
(11) Shri Timothy William Basnett (AC-25 Upper Tadong);
- B. (12) Shri Bek Bahadur Rai (AC-22 Namcheybong);
(13) Ms. Chandra Maya Subba (AC-2 Yangthang).

are not disqualified from being members of the Sikkim Legislative Assembly.

(Shrinivas Patil)

ANNEXURE TO THE ORDER OF THE GOVERNOR

REFERENCE CASE NO 1(G) OF 2018

(REFERENCE FROM THE GOVERNOR OF SIKKIM UNDER ARTICLE 192(2) OF THE CONSTITUTION OF INDIA)

IN REF: REFERENCE CASE NO 1(G) OF 2018-A REFERENCE FROM THE GOVERNOR OF SIKKIM UNDER ARTICLE 192(2) OF THE CONSTITUTION OF INDIA ON A REPRESENTATION FILED BY SHRI O.P.BHANDARI SEEKING DISQUALIFICATION OF 14 MEMBERS OF THE SIKKIM LEGISLATIVE ASSEMBLY

OPINION

1. This is a reference seeking 'opinion' of the Election Commission of India, which has been received from the Hon'ble Governor of Sikkim on 29/01/2018 under Article 192(2) of the Constitution of India, on three representations dated 30.10.2017 filed by Shri O.P.Bhandari (hereinafter referred to as the 'Petitioner') seeking disqualification of the following 14 Members of the Sikkim Legislative Assembly (hereinafter referred to as 'Respondents') viz:
 - A. 11 Members of the Sikkim Legislative Assembly namely: (1) Shri Danorbu Sherpa (AC-6 Darimdin (BL); (2) Shri Sonam Dadul Bhutia (AC-1 Yoksam Tashiding (BL); (3) Smt. Tilu Gurung (AC-13 Namthang Rateytani); (4) Shri Karma Sonam Lepcha (AC-5 Rinchenpong (BL); (5) Shri Ugen Nedup Bhutia (AC 29-Kabi Lungchuk); (6) Shri Shyam Pradhan (AC-26 Arithang); (7) Shri Hemendra Adhikari (AC-19 Rhenock); (8) Shri Gopal Baraily (AC-18 West Pendam (SC); (9) Dr.Mechung Bhutia (AC-24 Martam Rumtek); (10) Shri Pintso Chöpel (AC-27 Gangtok (BL); (11) Shri Timothy William Basnett (AC-25 Upper Tadong)-for holding office of profit being the office of Parliamentary Secretary under the Government of Sikkim;
 - B. 2 Members of the Sikkim Legislative Assembly namely: (1) Shri Bek Bhadur Rai (AC-22 Namchuibong) for holding office of profit being the office of Chairman, Public Accounts Committee of the Sikkim Legislative Assembly; and (2) Chandra Maya Subba (AC-2 Yangthang) for holding office of profit being the office of Chairperson of the Estimates Committee of the Sikkim Legislative Assembly.
 - C. 1 Member of the Sikkim Legislative Assembly, namely, Shri Bikram Pradhan (AC-20 Chujachen), for holding office of profit being the office of Government Chief Whip.
2. It is pertinent to note that this Opinion is only in respect of the complaints mentioned in sub-para (A) and (B) above.
3. The Petitioner, in his representation dated 30.10.2017 sent to the Hon'ble Governor of Sikkim, has stated that the 11 Respondents who held the post of Parliamentary Secretaries under the Government of Sikkim held the said office in breach of Article 192 of the Constitution.
4. The petitioner, in his representation dated 30.10.2017 sent to the Hon'ble Governor of Sikkim, has also laid emphasis upon the judgment dated 25.08.2017 of the Hon'ble Sikkim High Court *i.e Pahalman Subba & Ors.versus Status of Sikkim & Ors. (W.P (PIL) 4 of 2016)* wherein the Hon'ble High Court had quashed and held as unconstitutional the Sikkim Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2010.

5. Section 3A of the Sikkim Legislative Assembly Members (Removal of Disqualification) Act, 1978 (Act No.5 of 1978) as inserted by the Sikkim Legislative Assembly Members (Removal of Disqualifications) Amendment Act, 2006 (Act No.11 of 2006) states as under:

"3A Certain other offices not to disqualify-Notwithstanding anything contained in section 3 of the Act, the following offices under the State Government under any statute or rules or proclamations or through any other instrument issued in that behalf if held by a member of the State Legislative Assembly irrespective of powers, privileges, facilities, remuneration or allowances as may be provided shall not disqualify or be deemed to have ever disqualified the holder thereof for being chosen as or for being member of the State Legislative Assembly, namely(...)"

6. Article (bb) appended to Section 3A of the Sikkim Legislative Assembly Members (Removal of Disqualification) Act, 1978 the Sikkim Legislative Assembly Members (Removal of Disqualifications) Amendment Act, 2006 includes the Office of the Parliamentary Secretary appointed by the State Government, Sikkim.

7. The respondent MLAs who were appointed as the Parliamentary Secretaries in certain Departments in the State Government on various dates between 28.05.2014 and 30.11.2015 were given status of Cabinet Ministers in the State Government which was questioned in the Sikkim High Court by two Writ Petitions (W.P.(PIL) No.4 and 63 of 2016. By a common order dated 25th August, 2017 the Hon'ble Sikkim High Court struck down their appointments as Parliamentary Secretaries and also the act namely, Sikkim Parliamentary Secretaries (Appointment, Salaries, Allowances and Misc Provisions) Act, 2010, under which they are appointed. The court further directed that the aforesaid MLAs will cease to hold the office of the parliamentary secretaries from the date of the order, i.e.25.08.2017.

8. It is thus clear from the above mentioned narration of the facts that the aforesaid MLAs did hold the office of Parliamentary Secretaries under the Government of Sikkim from the dates of their respective appointments till 25.08.2017, when their appointment were struck down by the Hon'ble Sikkim High Court. However, it is seen from the Sikkim Legislative Assembly Member (Removal of Disqualification) Amendment Act, 2006 (State Act No.11 of 2006) which was effective from 17.06.2006, that the "office of the Parliamentary secretary appointed by the state Government, Sikkim" stood exempted from the purview of the disqualification under Article 191(1)(a) of the Constitution when these MLAs held the office of the Parliamentary Secretaries between May, 2014 and 25.08.2017. The Sikkim Legislative Assembly Member (Removal) of Disqualification) Amendment Act, 2006 is still in force and has not been struck down by the Hon'ble Sikkim High Court.

9. In the view of the above provisions of the Sikkim Legislative Assembly Members (Removal of Disqualifications) Amendment Act, 2006 (State Act No.11 of 2006), the said 11 MLAs who held office as Parliamentary Secretaries during the period from May, 2014 to 25th August, 2017 were covered under the exempted categories of office

10. In so far as the reference is concerned with respect to 2 Members of the Sikkim Legislative Assembly namely: (1) Shri Bek Bahadur Rai (AC-22 Namchuibong) for holding office of profit being the office of Chairman, Public Accounts Committee of the Sikkim Legislative Assembly; and (2) Chandra Maya Subba (AC-2 Yangthang) for holding office of profit being the office of Chairperson of the Estimates Committee of the Sikkim Legislative Assembly, it is important to note that these are not offices under the Government as the Government neither has the power of appointment nor of removal in relation to these offices. Therefore, the above noted Respondent MLAs are not disqualified for holding office of profit.

CONCLUSION

11. In view of the above quoted provisions of the Sikkim Legislative Assembly Members (Removal of Disqualification) Act, 1978 as amended by the Sikkim Legislative Assembly Members (Removal of Disqualifications) Amendment Act, 2006 it is opined that the office of Parliamentary Secretary under the Government of Sikkim falls under exempted category and the disqualification, if any, attracted by holding the office of Parliamentary Secretary under the Government of Sikkim stands removed by the operations of the said Act of 1978 and therefore, the 11 Respondent MLAs namely: (1) Shri Danorbu Sherpa (AC-6 Darimdin (BL); (2) Shri Sonam Dadul Bhutia (AC-1 Yoksam Tashiding (BL); (3) Smt. Tilu Gurung (AC-13 Namthang Rateytani); (4) Shri Karma Sonam Lepcha (AC-5 Rinchenpong (BL); (5) Shri Ugen Nedup Bhutia (AC-29 Kabi Lungchuk); (6) Shri Shyam Pradhan (AC-26 Arithang); (7) Shri Hemendra Adhikari (AC-19 Rhenock); (8) Shri Gopal Baraily (AC-18 West Pendam (SC); (9) Dr. Mechung Bhutia (AC-24 Martam Rumtek); (10) Shri Pintso Chöpel (AC-27 Gangtok (BL)); (11) Shri Timothy William Basnett (AC-25 Upper Tadong) who were appointed as Parliamentary Secretaries are not disqualified for holding office of profit.
12. 2 Members of the Sikkim Legislative Assembly namely: (1) Shri Bek Bahadur Rai (AC-22 Namchuibong) and (2) Chandra Maya Subba (AC-2 Yangthang) are not disqualified for holding office of profit as the offices occupied by them are not offices under the Government.

Sunil Arora
(ELECTION COMMISSIONER)

O.P. Rawat
(CHIEF ELECTION COMMISSIONER)

Ashok Lavasa
(ELECTION COMMISSIONER)

Place: New Delhi
Date: 18.04.2018